

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOSHUA DAVID MARTINEZ

v.

R. MENCHACA, ET AL.

§
§
§
§

C.A. NO. C-08-197

ORDER GRANTING LEAVE FOR DEPOSITION BY WRITTEN QUESTIONS

Plaintiff is an inmate in the Texas Department of Criminal Justice, Correctional Institutions Division, and is currently incarcerated at the McConnell Unit in Beeville, Texas. Proceeding pro se, he filed a civil rights action pursuant to 42 U.S.C. § 1983. (D.E. 1). Pending is plaintiff's motion for leave to depose a witness by written questions. (D.E. 145). Specifically, he seeks leave to depose John Bell, an inmate at the McConnell Unit.

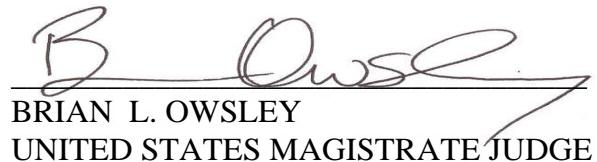
As an initial matter, the Federal Rules of Civil Procedure require that any party seeking to depose by written questions someone "confined in prison" must obtain leave of the court. Fed. R. Civ. P. 31(a)(2)(B); accord Whitehurst v. United States, 231 F.R.D. 500, 501 (S.D. Tex. 2005). "Unless the parties stipulate otherwise," deposition by written questions must be conducted before an officer. See Fed. R. Civ. P. 28(a)(1); Fed. R. Civ. P. 31(b). The party serving the deposition must deliver it to the officer. Fed. R. Civ. P. 31(b). Furthermore, the party noticing the deposition has an obligation to notify when the deposition is completed. Fed. R. Civ. P. 31(c). If the parties cannot stipulate, then it is ordered that the law librarian of the unit where Mr. Bell is incarcerated serve as the officer for the deposition by written questions.

Plaintiff must serve a copy of the deposition by written questions on defendants' attorney. Defense counsel will ensure that both the officer and the deponent receive the deposition and that the deposition is completed within thirty days of receipt.

To the extent that plaintiff is seeking to be present for deposition upon written questions, he does provide any support for this request. Therefore, his request to be present while the deponent answers the deposition questions is DENIED.

Accordingly, plaintiff's motion for leave to depose a witness by written questions, (D.E. 145), is GRANTED consistent with this Order.

ORDERED this 10th day of March 2009.


BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE